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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|--------------------|----------------------|--|------------------|
| 10/554,304 | 10/06/2006 | Xiyuan Chen | U 015993-0 | 6571 |
| 140 LADAS & PARRY LLP 26 WEST 61ST STREET NEW YORK, NY 10023 | 7590 11/27/2009 | | <div>EXAMINER</div> <div>AMIRMOKRI, JALALEDDIN</div> <div>ART UNIT</div> <div>PAPER NUMBER</div> <div>2617</div> <div>NOTIFICATION DATE</div> <div>DELIVERY MODE</div> <div>11/27/2009</div> <div>ELECTRONIC</div> | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

nyuspatactions@ladas.com

Office Action Summary

Application No.

10/554,304

Applicant(s)

CHEN ET AL.

Examiner

JALALEDDIN AMIRMOKRI

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on 07/24/09 has been entered. Claim 1 has been amended. No claims have been canceled. No claims have been added. Claims 1-7 are still pending in this application, with claim 1 being independent.

Response to Arguments

2. Applicant's arguments filed on 07/24/09 have been fully considered but they are not persuasive.

This is in response to Applicant's argument stating on page 15, last paragraph stating: "Claim 1 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement, for the reasons provided at paragraph 5 of the Office Action. Along with the amendments to claim 1, Applicants provide the following explanation to the Examiner. 1) Formula 1 of claim 1 is the target cost function. 2) The solution to the target cost function is not an essential technical feature of the claimed invention, and a person having ordinary skill in the art of linear programming would know how to solve the target cost function as shown in formula 1." Examiner respectfully disagrees and very kindly questions the need for the formula in the claim if the target cost function is not an essential technical feature of the invention. Furthermore examiner respectfully points out to the applicant that the solution of the target cost function as disclosed in claim 1 would not be clear to a person having

ordinary skill in the art. Finally examiner respectfully points out to the applicant that there is a lack of enablement in claim 1, not only due to its incoherency but also that there is a lack of disclosure in the claim to specify how the result of the target cost function is arrived at and is utilized in selecting the cell cluster as claimed and how they all ties together.

Claim Rejections - 35 USC § 112

3. Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The independent claim 1 recites the formulas for determining a target cost function. First the formulas lack proper cohesion to clearly specify their interrelationships. For instance formula 2 is supposed to be defining formula 1, but the variable x of formula 2 is not found in formula 1, nor is x of formula 2 defined to equate another variable in formula 1, or the relationship of formulas 5 and 6 to others is not specified. But more importantly the they do not show what the ultimate target cost function is and how is utilized to select the cell cluster in the claim. Without additional guidance, there would be undue experimentation as to how to determine the target cost for the selection process.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JALALEDDIN AMIRMOKRI whose telephone number is (571)270-5880. The examiner can normally be reached on M-F 8am-5m EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICK EDOUARD can be reached on (571)272-7603. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.A./

11/20/09

/Patrick N. Edouard/

Supervisory Patent Examiner, Art Unit 2617